business as a stall-holder, he was clearly not conveying the goods *"for hire or reward"*. The presumption, therefore, cannot be even remotely relevant.

In the result, we are of opinion that the applicant had been wrongly convicted on both charges. We accordingly quash the conviction and order that the fines be refunded. The disqualification is also annulled.

Conviction quashed.

Solicitors: *Dharmanada & Co.*

NEGARA TRADERS LTD. v. PESUROH JAYA IBU KOTA, KUALA LUMPUR

[O.C.J. (Raja Azlan Shah J.) February 5, 1969]
[K.L. — Civil Suit No. 972 of 1965]

Master and Servant — Liability of master — Forgery committed by servant — Scope of employment — No actual or ostensible authority.

The plaintiffs, without knowledge that local orders presented to them by the office messenger employed by the defendants were forgeries, sold and delivered certain goods to the defendants through the office messenger. The orders were forged by the office messenger and the defendants never received the goods. The forged orders were on the official forms of the defendants and were duly signed and stamped. The plaintiffs brought a claim for goods sold and delivered against the defendants on the principle of ostensible authority. It was proved that the defendants themselves were not at fault, that they had had no previous dealings with the plaintiffs and that it was not the duty of the office messenger to issue local orders.

Held: the office messenger did not have authority to guarantee the genuineness of the local orders which were forgeries. As the defendants did not hold him out to the plaintiffs as having authority to issue local orders and as it was not part of his duties to issue them, the defendants were not vicariously liable to the plaintiffs for the forgeries committed by the office messenger.

Cases referred to:—

(1) *Lloyd* v. *Grace Smith & Co.* [1912] A.C. 716.

(2) *Deatons Proprietary Ltd.* v. *Flew* (1949), 79 C.L.R. 370, 381.

(3) *George Whitechurch* v. *Cavanagh* [1902] A.C. 117.

(4) *Uxbridge Permanent Benefit Building Society* v. *Pickard* [1939] 2 All E.R. 344.

(5) *Sheriffa Shaikhah* v. *Ban Hoe Seng Co. Ltd.* [1963] M.L.J. 241.

(6) *Ruben* v. *Great Fingall Consolidated* [1906] A.C. 439.

(7) *Kreditbank Cassel* v. *Schenkers Ltd.* [1927] 1 K.B. 826.

(8) *South London Greyhound Race-courses Ltd.* v. *Wake* [1931] 1 Ch. 496.

(9) *Greenwood* v. *Martin's Bank Ltd.* [1933] A.C. 51.

CIVIL SUIT.

A.R. Rajasingam for the plaintiffs.

V.C. George for the defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a claim for goods sold and delivered to the defendants (the Commissioner of the Federal Capital, Kuala Lumpur). The plaintiffs are a firm dealing in hardware. They allege that on eight separate occasions the defendants through their authorised agent or employee ordered and took delivery of changkols and scythe blades to a total value of $4,217.

The circumstances giving rise to the present claim are quite clear and undisputed. On 17th November, 1964, the manager of the plaintiff firm received a telephone call purportedly to be from the Municipal Health Department, Kuala Lumpur, asking for quotations for changkols and scythe blades. After being told of the prices, the caller, who spoke in Tamil, informed the manager that he would issue a local order and send it through a messenger. He further requested the manager to deliver the goods to the messenger. About one hour later Rajamanickam, the office messenger of the defendants' health department, arrived wearing the authorised uniform of the defendants and presented a local order to the plaintiffs' manager. The local order was, in point of form, genuine inasmuch as it was the local order form used by the defendants and was correctly entered and appeared to be signed by the head of the health department, Dr. L.S. Sodhy, with the official rubber stamp affixed to it. On the strength of it the manager prepared the delivery note, obtained Rajamanickam's signature, and handed him the goods. On the following day he sent the invoice to the health department. Seven similar orders were purportedly issued by the defendants. The same Rajamanickam presented those local orders to the plaintiffs' manager; he then took delivery of the goods after acknowledging receipt of them on the delivery advice notes. It is of interest to note that there were no dealings between the parties before 17th November, 1964.

It transpired that these orders were forgeries. The financial clerk whose principal duty was to prepare local orders denies preparing them. Dr. L.S. Sodhy denies ordering the goods or signing the local orders. I believe them. Their evidence was neither contradicted nor challenged. The invoices and the goods never reached the defendants. Nor were they aware of the transactions until 19th December, 1964, when the plaintiffs confronted them with a requested for payment. They immediately refuted liability and refused to pay. Departmental investigation revealed the forgeries. On 21st December, 1964, they lodged a report with the police. On the same day Rajamanickam gave 24 hours' written notice to resign and left without informing anyone. That letter was just left on a table. Until now he cannot be traced and there is a warrant of arrest awaiting him. The goods were never recovered.

The plaintiffs seem to found their claim on the principal of ostensible authority. They say that the various orders tendered were the official forms of the defendants with the official rubber stamp affixed thereon, and were duly signed by the head of the department; they were presented by an employee of the defendants wearing their official uniform; the goods on delivery were taken by the same person; and lastly, several bills for each order were submitted to the defendants for settlement. They further say that the issue of forgery is totally irrelevant.

The defendants contend that the goods were never ordered by or delivered to them or their agent or employee. Alternatively, if the goods were ordered by their agent or employee, such agent or employee was not authorised and had no power to enter into any such contracts. A further alternative is that the order, if any, were forgeries and therefore they are not liable.

It was proved that in practice the defendants order such goods from their Cheras Road Municipal Store; orders from local firms are strictly prohibited. Local orders, when authorised, are prepared by the financial clerk and then signed by the Municipal Health Officer, and in his absence by his deputy. They are then despatched.

On the higher balance of probability there is ample evidence to establish that those local orders, if not actually forged by Rajamanickam, were known by him to be forged.

This case therefore raises the important question of how far a master is liable to third parties for the dishonesty and fraud committed by one of his servants when the master is not himself at fault. The classic exposition of the law governing such liability is to be found in the speeches of their Lordships in *Lloyd* v. *Grace Smith & Co.*[1] which can be summarised as follows: that the master is liable only if the dishonesty and fraud fell within the scope of the servant's real or ostensible authority, no matter whether it was done for the benefit of the master or for the benefit of the servant. In order to attract the vicarious liability, the servant's dishonesty and fraud must consist of "acts to which the ostensible performance of his master's work gives occasion or which are committed under cover of the authority the servant is held out as possessing or of the position in which he is placed as a representative of his master"; *per* Dixon J. in *Deatons Proprietary Ltd.* v. *Flew.*[2] Thus a company is not liable for the fraudulent issue or forgery of shares certificates by its secretary on the ground that the officer lacked, and was not held out as having, authority to perform any but purely ministerial acts in relation to the certification of transfers such as the issue of certificates signed by directors and in relation to shares which have been duly lodged: *George Whitechurch* v. *Cavanagh.*[3] In *Lloyd* v. *Grace Smith & Co., supra,* a solicitor's managing clerk was held out as a person fit to be trusted and endowed with authority to exercise his discretion in legal business with clients and therefore his principals were held liable for misappropriation of mortgage moneys by the clerk, who had induced one of their clients to transfer the mortgage to him by fraudulently misrepresenting the nature of the transaction. The essence of that case was that the clerk was acting within the scope of his ostensible authority in receiving the deeds and thus his principals had them in their charge. The principle in *Lloyd's* case now includes forgery of title deeds by a solicitor's managing clerk within the scope of his ostensible authority: *Uxbridge Permanent Benefit Building Society* v. *Pickard.*[4] In that case the clerk by false representation and the production of forged title deeds which, if not actually forged by him, were known by him to be forged, induced the plaintiffs to advance money to a person alleged by the clerk to be a client of the firm on a mortgage of land. The law has been extended to apply to a case of principal and agent. See *Sheriffa Shaikhah* v. *Ban Hoe Seng Co. Ltd.*[5]

Counsel for the defendants contended that the observations in *Ruben* v. *Great Fingall Consolidated* [6] have application to the facts of this case. In that case an attempt was made to saddle a limited liability company with responsibility for the fraud of its secretary who obtained money from the plaintiff by issuing forged share certificates to which the seal of the company was affixed, and the signatures of two directors forged by the secretary. The plaintiff contended that the certificates were delivered by the secretary in the course of his employment and that the delivery imputed a representation of warranty that they were genuine. It was admitted that the secretary was a proper person to deliver certificates on behalf of the company. The House of Lords rejected this contention by saying:—

> "He had not, nor was he held out as having, authority to make any such representation or to give any such warranty. And certainly no such authority arises from the simple fact that he held the office of secretary and was a proper person to deliver certificates. Nor am I able to see how the defendant company is estopped from disputing the genuineness of this certificate. That, indeed, is only another way of stating the same contention. From beginning to end the company itself and its officers, with the exception of the secretary, had nothing to do either with the preparation or issue of the document."

(*Per* Lord Loreburn at page 443). Lord Macnaghten made a similar observation (page 444):—

> "The fact that this fraudulent certificate was concocted in the company's office and was uttered and sent forth by its author from the place of its origin cannot give it an efficacy which it does not intrinsically possess. The secretary of the company, who is a mere servant, may be the proper hand to deliver out certificates which the company issues in due course, but he can have no authority to guarantee the genuineness or validity of a

document which is not the deed of the company. I could have understood a claim on the part of the appellants if it were incumbent on the company to lock up their seal and guard it as a dangerous beast and if it were culpable carelessness on the part of the directors to commit the care of the seal to their secretary or any other official. That is a view which once commended itself to a jury, but it has been disposed of for good and all by the case of *Bank of Ireland* v. *Trustees of Evans' Charities* in this House". (See 5 H.L.C. 389).

Another ground put forward by the company was that the certificates were forgeries. Lord Loreburn made the following observation when the issue of forgery was raised (page 443) :—

"I cannot see upon what principle your Lordships can hold that the defendants are liable in this action. The forged certificate is a pure nullity. It is quite true that persons dealing with limited liability companies are not bound to inquire into their indoor management and will not be affected by irregularities of which they had no notice. But this doctrine, which is well established, applies only to irregularities that otherwise might affect a genuine transaction. It cannot apply to a forgery".

Lord Macnaghten had this to say (page 444) :—

"The thing put forward as the foundation of their claim is a piece of paper which purports to be a certificate of shares in the company. This paper is false and fraudulent from beginning to end. The representation of the company's seal which appears upon it, though made by the impression of the real seal of the company, is counterfeit, and no better than a forgery. The signatures of the two directors which purport to authenticate the sealing are forgeries pure and simple. Every statement in the document is a lie. The only thing real about it is the signature of the secretary of the company, who was the sole author and perpetrator of the fraud. No one would suggest that this fraudulent certificate could of itself give rise to any right or bind or affect the company in any way. It is not the company's deed, and there is nothing to prevent the company from saying so".

This principle has been applied to bills of exchange forged by a branch manager. See *Kreditbank Cassel* v. *Schenkers Ltd.*,[7] and to share certificates forged by the director and secretary of a company: *South London Greyhound Race-courses Ltd.* v. *Wake.*[8]

Although it is correct to hold that the present plaintiffs have a right to assume that all matters of internal management in the defendants' department had been duly complied with and that they would not be affected by irregularities of which they had no notice, that rule applies only to irregularities that might otherwise affect a genuine transaction. It cannot apply to a forgery. In my opinion this point is fatal to the plaintiffs' case and therefore they can make no claim against the defendants except upon one of two grounds, either that the defendants are estopped from setting up the forgeries (see *Greenwood* v. *Martin's Bank Ltd.*[9]) or that the office messenger had such ostensible authority as to render his employers, the defendants, liable for his act in presenting the orders and taking delivery of the goods.

In my judgment the defendants are not estopped from setting up the forgeries. There were no previous conduct or dealings of the defendants to establish agency by estoppel. The defendants had never conducted themselves in any manner or done anything to represent or lead the plaintiffs to the belief that those transactions were their deeds. Without such representation there can be no estoppel. There was no evidence in this case upon which an estoppel could be founded. The plaintiffs are then driven to rely, if they can, upon the ordinary rule applicable in the case of principal and agent. If they can show that the preparation and authentication of those orders were within the ostensible authority of the person occupying the position which this office messenger occupied, there might have been a claim founded upon this ground. There was no such evidence. Indeed it was proved that it was not part of the office messenger's duties to issue local orders. Counsel for the plaintiffs then sought to persuade me to consider the case from another angle. He says that the issue of forgery is totally irrelevant. The only point which I have to consider, he says, is that those orders which in all respects were in proper form, i.e. duly signed and stamped, were presented by the agent of the defendants wearing their authorised uniform. In my opinion the fact that those orders were forgeries cannot give them the efficacy which they do not intrinsically possess. The office messenger, who is a mere servant, may be the proper person to present (personally) those orders which the defendants might in due course issue, but he can have no authority to guarantee the genuineness or validity of the documents which are not the deeds of the defendants. If those orders were forgeries, then they were mere waste paper.

The plaintiffs' case is dismissed with costs.

Claim dismissed.

Solicitors: *R. Rajasingam & Co.; Shook Lin & Bok.*

KOAY HEAN KIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) February 7, 1969]
[Penang — Criminal Appeal No. 5 of 1969]

Criminal Law and Procedure — Sentence — Appeal against — Discretion of lower court — Whether an appeal judge should interfere.

Penal Code, s. 385 — Putting person in fear of injury in order to commit extortion — Sentence.

Unless a sentence imposed by a lower court is manifestly excessive an appeal judge should not interfere with the discretion of a magistrate otherwise there would be chaos in the lower courts so far as exercising the discretion in the matter of punishment is concerned.

CRIMINAL APPEAL.

Baldev Singh Bhar for the appellant.

K.C. Vohrah (Deputy Public Prosecutor) for Public Prosecutor.